

St. Louis City Ordinance 62537

FLOOR SUBSTITUTE

BOARD BILL NO. [91] 360

INTRODUCED BY ALDERMAN MARTIE ABOUSSIE

An ordinance authorizing and directing the Mayor and Comptroller to lease 41,425 square feet of the Unimproved Wharf and 303 linear feet of mooring, under certain terms and conditions, for a period of ten (10) years with three (3) five (5) year options to Slay Industries, and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

Section One. The Mayor and the Comptroller are hereby authorized and directed to enter into a lease agreement with Slay Industries, 1441 Hampton Avenue, St. Louis, Missouri 63139, which shall read in words and figures as follows:

LEASE AGREEMENT

This Agreement made and entered into as of the ____ day of 199____, by and between the City of St. Louis, a Municipal Corporation of the State of Missouri, hereinafter called Lessor, through its Mayor and Comptroller and Slay Industries, a Missouri Corporation, hereinafter called Lessee.

WITNESSETH:

1. That, for and in consideration of the rents hereinafter reserved to be paid by Lessee to the Lessor, and the mutual covenants and agreements herein contained, the Lessor hereby leases and lets to said Lessee the following described land and mooring privileges to wit:

Beginning at an iron pipe in the eastward prolongation of the south line of Victor Street (60 feet wide), said point being 25 feet (more or less) southeasterly of the centerline of the floodwall; thence along said prolongation of the south line of Victor Street South 55 degrees 19 minutes 37 seconds East, a distance of 143.64 feet to an iron pipe set at the top of the Mississippi riverbank; thence along said top of riverbank South 38 degrees 54 minutes 22 seconds West, a distance of 301.73 feet to an iron pipe; thence continuing along said top of riverbank South 35 degrees 27 minutes 38 seconds West, a distance of 74.77 feet to an iron pipe; thence along a line parallel to the eastward prolongation of the north line of St. George Street (60 feet wide and being a

distance of 286.50 feet northerly thereof) North 55 degrees 17 minutes 19 seconds West, a distance of 74.88 feet; said point being 40 feet (more or less) southeasterly of the centerline of the floodwall; thence along a line parallel to and 40 feet easterly of the floodwall North 30 degrees 02 minutes 43 seconds East, a distance of 110.74 feet to an iron pipe; thence North 14 degrees 57 minutes 17 seconds West a distance of 21.21 feet to an iron pipe; thence along a line parallel and 25 feet easterly of the centerline of the floodwall North 30 degrees 02 minutes 43 seconds East, a distance of 252.33 feet to the point of beginning and containing 41,425 square feet or 0.951 acres more or less.

Also three hundred three feet (303') of mooring starting at a point two hundred forty feet (240') south of the eastward prolongation of the south line of Victor Street (60 feet wide) and extending southward therefrom approximately Three Hundred Three Feet (303').

2. This lease agreement shall be for a period of ten (10) years, beginning the ____ day of _____, 199____, and terminating on the ____ day of _____, 200____, with three (3) five (5) year mutual options. Lessee must give six (6) months written notice to the Executive Director, Port Authority of the City of St. Louis, 330 North 15th Street, St. Louis, Missouri 63103, prior to the expiration of this agreement or any extension thereof, if it wished to exercise an option to extend the term for an additional five (5) year period. Such option(s) are subject to the approval of the Board of Public Service and the Port Authority Commission.

3. For the rights and privileges herein granted, the Lessee agrees to pay the Lessor for the following rental:

For land an annual rental of Four Thousand Three Hundred Forty Nine Dollars and Sixty Two Cents (\$4,349.62) payable annually in advance.

For mooring an annual rental of Three Thousand One Hundred Eighty One Dollars and Fifty Cents (\$3,181.50) payable annually in advance.

Additionally, the lessee has agreed to an additional annual lease payment (the "additional annual lease payment") of Two Thousand Five Hundred Dollars (\$2,500.00) payable annually in advance.

4. The rents to be paid to the Lessor for the rights and privileges leased for the land and mooring, not including the additional annual lease payment hereunder shall be subject to adjustments as provided by, and under the terms and conditions set forth in "APPENDIX A STANDARD PROVISIONS, LEASES

OF WHARF LAND AND MOORING RIGHTS," which is attached hereto and made a part hereof.

5. The above described areas shall be used to provide Lessee additional capacity to continue its growth potential through the 1990's and into the 21st century. Over the last twenty years, Lessee has made over \$5 million worth of improvements to its Barton Street facility located on the unimproved wharf area that it presently leases from the City, and in the last two years has made expansion improvements of \$1.5 million. The mooring privileges will be occupied as a fleeting site for barges. All lessee's companies are available for public use.

6. Leases of parts of the unimproved wharf, unless specially provided otherwise, shall give the use and control of the grounds leased to the lessee, subject to the condition that the lessee shall leave an unobstructed roadway, not less than 25 feet on each side of the floodwall or levee. The 25 foot wide road easement and 25 foot wide bike trail easement shall be kept clear and unobstructed for a recreation trail and/or other municipal use.

7. All other matters governing this lease as well as rents are set forth in said "Appendix".

LESSEE: SLAY INDUSTRIES

By: _____

LESSOR: CITY OF ST. LOUIS, MO

MAYOR

ATTEST:

COMPTROLLER

ATTEST:

CITY REGISTER

Section Two. Appendix "A" to the lease agreement shall be substantially in the same words and figures as the document attached hereto and denominated as Appendix "A", which is made a part of this Ordinance and is on file in the Register's Office.

Section Three. In the event that the lease agreement authorized hereby is not fully executed and filed in the Office of the City Register within twelve (12) months of the effective date of the Ordinance, the authority to lease the described land/mooring rights shall automatically become null and void.

Section Four. Emergency Clause. This being an ordinance for the immediate preservation of public peace, health and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore this ordinance shall become effective immediately upon its passage and approval by the Mayor.

APPENDIX "A"

STANDARD PROVISIONS

LEASES OF WHARF LAND AND MOORING RIGHTS

1. The base rate of \$0.0750 (current adjusted base rate \$0.105) per square foot of land and \$7.50 (current adjusted base rate \$10.50) per linear foot of mooring may be adjusted at five year intervals beginning January 1, 1994 upon recommendation of the Port Commission and approval of the Board of Public Service. No such recommendation may be made by the Port Commission unless within 180 days before January 1, on which the adjusted rates are to become effective, the Port Commission shall conduct a public hearing with due notice to the public and to the users of City owned land and mooring rights. The maximum adjustment which can be recommended and approved shall be 25% of the base rates set out in the first sentence of this section. Each adjustment shall be added to the base rate plus any previous adjustments and the resultant rate shall be called the current adjusted base rate. If the recommended adjustment to the base rate by the Board of Public Service is in excess of 15%, the recommended raise of rate shall be approved by resolution of the Board of Aldermen. If the Board of Aldermen fails to act before the effective date of the rate, the rate then shall be automatically adjusted by 15%.

2. The above mooring area or leased parcel shall be used by Lessee only for purposes consistent with the lawful use of said area. Structures or major alterations shall be made in accordance with plans and specifications approved

by Lessor through the Board of Public Service. Upon the expiration, termination, or cancellation of the lease agreement, the Lessee shall remove all and any vessels, boats, watercraft or other practical movable structures from the mooring, without expense to the Lessor, unless authorized by Section Eleven (11). In the event said vessels, boats, watercraft or other practical movable structures are not removed within ninety (90) days after receipt of notice by the Lessee, the Lessor may take possession of said vessels, boats, watercrafts or other practical movable structures or may cause same to be removed at the expense of the Lessee.

Written notice when required shall be deemed to be sufficient and delivered when deposited in the certified U.S. Mail and sent to Lessee's last known address.

3. Definitions. As used in this agreement, the following terms shall have the meaning specified herein:

(1) The term "Discharge" shall have the meaning ascribed to such term by [311\(a\)\(2\)](#) of the Clean Water Act, 33 USC [1321\(a\)\(2\)](#);

(2) The term "Hazardous Substance" shall mean any substance designated or considered as hazardous pursuant to [101\(14\)](#) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC [9601\(14\)](#);

(3) The term "Hazardous Waste" shall mean any substance designated or considered to be a hazardous waste pursuant to either [1004\(5\)](#) of the Resource Conservation and Recovery Act, 42 USC [6903\(5\)](#) or [260.360\(10\)](#) R.S.Mo.;

(4) The term "Infectious Waste" shall mean any substance designated or considered to be an infectious waste pursuant to [260.360\(13\)](#) R.S.Mo.

(5) The term "Oil" shall mean any substance designated or considered to be an oil pursuant to [1001\(23\)](#) of the Oil Pollution Liability Act of 1990, Pub. Law 101-380;

(6) The term "Port Commission" shall mean the Commission of the Port Authority of the City of St. Louis;

(7) The term Solid Waste shall mean any substance designated or considered as a solid waste pursuant to [260.200\(25\)](#) R.S.Mo.

4. During the term of this lease or renewal or extension thereof, the Lessee agrees to abide by all City Ordinances, State Laws, Federal Laws, Coast Guard, Corps of Engineers and any other properly applicable governmental regulatory requirements, including, but not limited to, any and all such provisions regulating and/or relating to: (1) transportation, storage, use, manufacture, disposal, discharge, release or spilling of hazardous substances; (2) transportation, storage, use, treatment, disposal, discharge, release or spilling of "hazardous waste"; (3) transportation, storage, use, recovery, disposal, discharge, release or spilling of "oil"; (4) "discharges" of effluents, pollutants and/or toxic pollutants to either publicly owned treatment works or directly to waters of the United States or tributaries thereof; (5) emissions of pollutants and/or other substances into the air; (6) transportation, storage, treatment, disposal, discharge, release or spilling of "infectious waste" ; (7) transportation, storage, treatment, recycling, reclamation, disposal, discharge, release or spilling of "solid waste"; and (8) transportation, storage, or disposal of waste tires, used white goods and other appliances, waste oil, and/or used lead-acid batteries. Violation of any provision of federal or state law or City ordinance by Lessee shall be considered a breach of the lease agreement between Lessee and the City for which the City, at its sole option, may terminate the lease. In addition, Lessee shall call to the attention of the proper enforcement authorities, any violation of any federal or state law or local ordinance occurring on the leased premises of which Lessee has actual knowledge. Failure to do so on the part of the Lessee shall be considered a breach of this agreement for which the City, at its sole option, may terminate the lease.

Should Lessee's operation on the leased premises violate any provision of federal and/or state laws or regulations Lessee shall, immediately upon becoming aware of the existence of such violation, notify the Port Authority and undertake whatever action is necessary to remedy the violation and comply with the applicable provision(s). Should Lessee fail to remedy the violation, the City may notify Lessee of its intent to undertake remedial action. If Lessee fails to then institute reasonable remedial action within 96 hours of receiving said notice, the City may take whatever action is necessary to bring the leased premises into compliance. Lessee shall reimburse the City for all costs incurred by the City in remedying such violation, including, but not limited to, reasonable attorneys fees and expenses, litigation costs, fees for engineering and consulting services, and costs of testing, remediation, removal and disposal.

5. Lessee agrees to hold Lessor harmless for all limits of liability and to defend the Lessor from any and all claims for injuries or damages resulting from or rising out of Lessee's use of the leased premises or mooring area described

herein; and that it will at all times during the term of this lease at its own cost, and for the benefit of the City, protect the City with Public Liability and Property Damage Insurance, issued in the name of Lessee and naming the City of St. Louis and Port Authority as named insured, covering each person up to \$500,000 with an overall limit as to all persons for each accident of \$1,000,000 and \$1,000,000 for property damage, approved by the City Counselor as to form and by the Comptroller as to surety and reserving the right of recovery by the City in the event of damage to City owned property, which shall be filed with the Port Authority and the Comptroller's Office before the lease is issued. Said insurance coverage must be maintained during the life of this lease, and any renewal or extension thereof.

Included in the insurance policy shall be coverage requiring immediate removal of the vessel when the vessel is damaged or sunken from any cause whatsoever. This clause shall be expressed as a specific warranty by the insurance company regardless of cause.

Lessee agrees to indemnify and hold harmless the City of St. Louis, the St. Louis Port Authority, and their employees, agents and servants, and to defend them against any lawsuits or claims, for any liability, injuries, damages, penalties or fines arising from or relating to the disposal, discharge, release, or spilling, into or onto the air, water, soil, sewer system or similar media, of any hazardous substance, hazardous waste, pollutant, toxic pollutant, extremely hazardous substance, toxic substance, infectious waste, solid waste, or similar material or substance, which disposal, discharge, release or spill, whether accidental or intentional, occurs on or from the leased premises during the term of this agreement.

Lessee shall be required to purchase and maintain environmental impairment liability insurance, during the term of this lease, in the amount of One Million Dollars (\$1,000,000.00), or such other amount as shall be determined solely by the Port Commission, and naming the City of St. Louis as an additional insured, if:

(1) at any time more than 500 pounds of a hazardous substance(s), hazardous waste, oil or infectious waste will be stored or otherwise present on the leased premises in any type of container(s) (including, but not limited to, drums, barrels, boxes, bags, tank trucks or trailers, rail cars or storage tanks, whether above or below ground);

(2) Lessee is required by federal or state law and/or regulation, as a result of or in connection with Lessee's operations on the leased premises, to obtain a

permit for (a) discharges of effluents, pollutants, toxic pollutants or other substances into waters of the United States, tributaries thereof, sewer systems and/or publicly owned treatment works; (b) discharges of effluents, pollutants or toxic pollutants to a sewer system and/or publicly owned treatment works subsequent to pretreatment thereof; (c) emission of pollutants or other substances into the air; (d) treatment, storage or disposal of hazardous waste(s); (e) treatment, storage or disposal of infectious waste(s); (f) treatment, storage, processing, management, recycling or disposal of solid waste(s); (g) operation of a waste tire site or waste tire processing facility; or (h) placement of fill or dredged material into the waters of the United States or adjacent property;

(3) Lessee is required to file a hazardous waste generation registration report pursuant to [§260.360\(8\) R.S.Mo.](#) or is otherwise required to obtain a hazardous waste generator identification number from either the federal or a state government;

(4) Lessee engages in the recycling, recovery or reclamation of solid wastes, hazardous wastes and/or hazardous substances on the leased premises;

(5) Lessee engages in the manufacture of hazardous, extremely hazardous, and/or toxic substances on the leased premises.

The environmental impairment liability insurance required pursuant to the terms of the preceding paragraph shall provide coverage for unexpected and unintended liability, damages and injuries arising or resulting from sudden and accidental, continuous or repeated discharges, spills and releases, into or onto the air, water, soil, sewer system or similar media, of any hazardous substance, hazardous waste, pollutant, toxic pollutant, extremely hazardous substance, toxic substance, infectious waste, solid waste, or similar material or substance, which disposal, discharge, release or spill occurs on or from the leased premises. The amount of environmental impairment liability insurance required hereunder may be adjusted at five year intervals beginning March 1, 1997, upon recommendation of the Port Commission and approval of the Board of Public Service. Such recommendation shall be made at least 30, but no more than 60, days prior to expiration of each five year period. The amount of environmental impairment liability insurance required shall not increase more than 25% in any five year period. If no recommendation is made by the Port Commission to adjust the amount of insurance required for a five year period prior to expiration of the previous five year period, or if the Port Commission recommendation is not approved by the Board of Public Service, the amount of insurance required shall automatically increase by 15%.

Any insurance policy which Lessee is required to obtain pursuant to the provisions of this section shall provide that said policy may not be cancelled except upon the giving of thirty days notice of such cancellation to the Office of the Comptroller of the City of St. Louis. In the event that any policy which Lessee is required to obtain pursuant to the provisions hereof is cancelled by the insurer, Lessee shall be required to obtain replacement insurance, and provide proof thereof to the Comptroller's Office, prior to the date that the cancellation becomes effective. Failure to do so shall be considered a breach of this lease. The Lessee shall notify or cause the insurance company to notify the Comptroller's Office of the renewal of all insurance required pursuant to the provisions of this section or of the cancellation of same. Failure to do so shall be considered a breach of this lease.

6. Upon the nonpayment of the rent specified herein at the time when the same becomes due, or upon the nonperformance by the Lessee of any of the substantive covenants hereinbefore or hereinafter mentioned, or those specifically covered herein, the Lessor, at its election may terminate this lease, provided that the Lessee shall, after notice of nonpayment or default, have thirty (30) days to cure any such nonpayment and ninety (90) days to cure any other default, unless the provisions hereof provide either that a specified breach is grounds for termination of the lease or that failure to cure within a specified time frame of less than ninety (90) days is grounds for termination. The failure and omission of the Lessor to declare this lease forfeited upon the default of said Lessee in the payment of said rents as the same become due, or the nonperformance of any of the substantive covenants to be performed by the Lessee, shall not operate to bar, abridge, or destroy the right of the Lessor to declare this lease null and void upon any subsequent breach, forfeiture or cause therefore by the Lessee.

7. Lessee agrees to pay ad valorem taxes on boats, vessels, aircraft or watercraft and on operation of same that may be moored on said leased area or any operations within said leased area, including all other owned property and equipment, and it is agreed that the Lessee will not deny the authority of the proper assessing agency to assess ad valorem taxes on said improvements. The Lessee reserves the right to question the amount of such assessment in any court of competent jurisdiction or other tribunal established by law to correct the valuation of the property on which the assessment of such tax is based. Failure to do so shall be considered a breach of the terms of this lease. All barges in the transit shall be exempt.

8. If the Lessee remains in possession of the leased premises after the expiration of the terms for which it is leased and the Lessee pays rent and the

Lessor accepts said rent, such possession shall be construed as creating a month to month tenancy and not a renewal or extension of this lease but such month to month tenancy shall not continue for more than one (1) year.

9. The Lessor reserves the right to modify, amend, or cancel said lease as set forth in section 10 hereof in the event the premises are needed for right of way, sewer or Floodwall construction purposes or any other necessary or reasonable municipal purposes or uses.

Municipal purposes or uses shall include economic development in the Port District.

10. In the event that any portion of the leased parcel or mooring area shall be needed for any municipal purpose, subject to the same exclusion set forth in section 9 above, sewer, right of way, Floodwall or Floodwall construction, as set forth in section 9 hereof, the Lessor shall have the right to modify, amend, or cancel this lease upon one (1) year's written notice thereof to Lessee and eliminate such portion of the leased or mooring area as shall be needed for such purpose. In such event, it is agreed and understood by Lessee that no claim or action for damages or other compensation shall arise or be allowed by reason of such termination or modification. Written notice when required shall be deemed to be sufficient and delivered when deposited in the Certified U.S. Mail and sent to Lessee's last known address.

11. If this lease is amended or modified under the provisions of Sections Nine (9) or Ten (10), the current rent shall be adjusted in direct proportion to the change made in the leased area. If the remaining area is not suitable to the Lessee, Lessee shall have the right to terminate this lease without penalty by written notice within 90 days after receipt of the notice to amend provided by Section Ten (10).

12. In the event this lease is cancelled, modified or amended under the provisions of Sections Nine (9) or Ten (10), the Lessor shall cause the Lessee to be reimbursed for the undepreciated cost of the capital improvements (not removable) the Lessee has made and paid for and not prorated to the Lessee's customer or paid for by Lessee's customer. Such capital improvement being only those which have been made pursuant to the written approval of the Board of Public Service and those improvements in place on the date hereof whether or not approved by said Board. It is agreed and understood that the term capital improvements shall not include wharf boats, vessels or other floating or transferable stationary improvements. Such reimbursement shall be made by or as a part of the cost of the intended new use. Reimbursement will not be based

on anticipated profits, and no funds from general revenue shall be used for this purpose.

In the event that the rate for service to the customer has been increased to cover the cost of the capital improvements, this accumulated increased cost shall be deducted before the undepreciated cost of the capital improvements is determined.

13. The Lessee shall have the right to terminate this lease upon service of one (1) year's written notice and the payment of an additional one (1) year's rental which shall accompany such notice. The payment of the additional year's rental shall not relieve Lessee of the obligation to pay the current year's rental as provided herein.

14. Any sublease or assignment of this lease, change in corporate structure, or any rights thereunder, shall be valid only with the approval of the Board of Public Service of the City of St. Louis and the Port Commission. If approved, all parts of this lease are binding on sublessor or assigns.

15. This lease may be cancelled at the option of the City if, at any time during the term of this lease, the person or persons who on the date of execution of this lease own or owns a majority of the Lessee's voting shares of stock, ceases or cease to own majority of such shares, except as the result of transfer(s) by gift or inheritance, or public work offering pursuant to the Securities and Exchange Act of 1934, as amended, or merger into or consolidation with another corporation.

Sale of a portion or all of the assets of the Lessee, or sale or transfer of the lease by the Lessee, without Board of Public Service and Port Commission approval, which approval shall not be unreasonably withheld, makes this lease subject to cancellation at the option of the City.

If sale, transfer or assignment of Lessee's stock is approved, all parts of this lease are binding on the purchaser, transferee or assignee.

16. The Lessee agrees not to erect any barrier, fence or supporting structures or store any materials on the Floodwall itself or twenty-five (25) feet on either side of the Floodwall.

17. Any delinquent payment shall bear interest from the date due at prime rate plus two (2%) percent. Prime rate shall be that average rate as established by Mercantile Bank of St. Louis N.A. and Boatmen's National Bank of St. Louis.

18. The Lessee shall not store any garbage or trash on the Wharf or mooring area, but must keep the area neat and free of all trash and rubble. Further, the Lessee shall prohibit and enforce the ruling that no trash or articles of any sort shall be thrown overboard or into the river. The Lessee shall enforce this clause on any craft or vehicle servicing, or being serviced by, the Lessee. Failure to do shall be considered a breach of this contract.

The Lessee shall have responsibility for the housekeeping on the Improved Wharf immediately in front of the mooring area. Failure to maintain this area as required by this lease and all other City ordinances when directed by the Board of Public Service with the approval of the Port Commission shall result in the cancellation of this lease.

19. Upon execution of this lease, the Lessee shall, at his own expense, have this lease recorded by the City's Recorder of Deeds and have the Register make a microfilm of the lease.

20. AFFIRMATIVE ACTION PROGRAM TO INSURE NON DISCRIMINATION AND FAIR EMPLOYMENT PRACTICES.

Lessee agrees that in performing under this contract neither Lessee nor anyone under Lessee's control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, national origin or ancestry, sex, age, handicap, or veteran's status.

If Lessee is unable to conform to the approved positive employment program submitted to determine eligibility under the fair employment practice provisions of the City code, Lessee will notify the Civil Rights Enforcement Agency, Civil Courts Building, St. Louis, Missouri, to determine steps to be taken by the Lessee to achieve the provisions of the City's program.

21. After expiration of this lease, and if the Lessee operates on a month to month basis, all articles of the lease continue to apply for one year only.

22. Annually, the Lessee must present to the Port Commission a marine survey of the safety of the facilities operated by them.

23. All vessels must be moored in line parallel to the Floodwall and there shall be no mooring in such number as to violate any applicable permits obtained by Lessee from the U.S. Corps of Engineers without approval of the Board of Public Service and the Port Commission.

24. No auxiliary craft shall be moored to any craft covered by this lease except for public safety reasons and maintenance. Maintenance craft may be moored during the period maintenance is taking place.

25. Other than as to installations in existence on the date hereof which shall not be subject to the requirements set forth herein, after notice to the Board of Public Service and the Port Authority, Lessee shall have the right to install, or modify the installation or use of, deadmen and mooring cells on the bank adjacent to Lessee's mooring area in accordance with plans and specifications approved by a licensed marine engineer for such installation, or modification of the installation or use thereof. Lessee must obtain the proper permits from the City, State and Federal regulatory agencies. Lessee shall have the right to ingress and egress to the mooring facilities over the land between the Floodwall and the mooring area leased herein.

26. Lessee accepts the property in "as is" condition, and, except as otherwise expressly stated elsewhere in this agreement, without any express or implied warranties of suitability, merchantability, fitness for a particular purpose or environmental fitness. The City of St. Louis has made no representations or warranties, express or implied, and explicitly disclaims the same, concerning the absence of any pollution, contamination, hazardous waste, hazardous or toxic material or substance, underground storage tanks or hazardous building materials in, on or around the leasehold or its improvements, except as may be specifically and expressly stated elsewhere in the lease agreement.

27. Lessee shall not remove any underground or aboveground storage tanks located on the leasehold without first obtaining the written consent of the Port Commission, which consent shall not be unreasonably withheld. In no event shall Lessee abandon in place an underground storage tank. Nor shall Lessee install any underground or aboveground storage tanks on the leased premises without first obtaining the permission of the Port Authority. Unless specifically stated elsewhere in this lease agreement, the Port Commission shall have absolute discretion to approve or deny a request by Lessee to install a new underground or aboveground storage tank. Notwithstanding the foregoing provision, where the Lessee proposes to replace an existing underground or aboveground storage tank with a new tank, the Port Commission shall not unreasonably withhold permission therefor.

28. Unless specifically stated elsewhere in this lease agreement, the Lessee must obtain the explicit written permission of the Port Commission prior to applying to an agency or agencies of the state and/or federal governments for a permit or license to:

- (1) treat, store or dispose of hazardous waste(s);
- (2) treat, store or dispose of infectious waste(s);
- (3) treat, store or dispose of waste oil;
- (4) treat, store, process, manage, recycle or dispose of solid waste(s);
- (5) operate a waste tire site or waste tire processing facility; or
- (6) manufacture hazardous or toxic substances; on all or a portion of the leased premises. Nor, unless explicitly stated elsewhere in this lease agreement, shall Lessee engage in any of the operations enumerated above, for which a federal and/or state permit or license is required, without first obtaining explicit written permission therefor from the Port Commission. Lessee shall not apply for a permit or license to allow it to place, nor shall Lessee place, any fill or dredged material into the waters of the United States or tributaries thereof which are adjacent to or on the leased premises without first obtaining the explicit written approval of the Port Commission therefor.

29. Lessee agrees and warrants that, upon termination of Lessee's tenancy of the leased premises pursuant to the terms of this or a subsequent lease agreement, it shall return the leased premises to the City free of any and all hazardous or toxic substances, hazardous wastes, infectious wastes, solid waste (unless disposal of solid waste on the leasehold was specifically permitted by the terms of this lease or a subsequent written document executed on behalf of, and authorized by, the Port Commission), pollutants, and contaminants which were placed, released, discharged, disposed, and/or spilled on or into the leased premises during Lessee's tenancy. Lessee shall, upon termination of its tenancy, remove all product(s) or waste(s) stored in underground and aboveground storage tanks, located on the leased premises, which were installed or used during the term of the Lease. Upon termination of tenancy, Lessee shall also perform tank tightness testing on all underground and aboveground storage tanks and connecting piping, installed or used during the term of the Lease, and shall either remove or repair any tanks or piping which fail such tests. Lessee shall also either remove or decontaminate any soil contaminated by leaks from storage tanks or connecting piping installed or used during the term of the Lease. In the event that Lessee fails to perform its obligations pursuant to this section of the lease agreement, the City shall give Lessee notice of said failure within 30 days of discovering the Lessee's default of its obligations under this section. If Lessee fails to fully comply with its obligations hereunder within 30 days of such notice, the City may undertake such actions as are necessary to

bring the leased premises into compliance with the standards set out herein. In the event that the City is required to undertake actions to bring the leased premises into compliance with said standards, Lessee shall reimburse the City for all costs thereof, including, but not limited to, reasonable attorneys fees and expenses, litigation costs, fees for engineering and consulting services, costs of testing, removal, and/or remediation, and disposal costs.

30. Lessee shall, with respect to its use of the leased premises, periodically furnish the Port Authority with satisfactory proof that it is in full compliance with any and all federal and/or state laws and regulations and City ordinances relating to or concerning air quality, water quality, noise, hazardous or toxic materials, hazardous wastes, infectious wastes, solid wastes, underground storage tanks and hazardous building materials. Further, Lessor shall have the right to inspect any and all portions of the leased premises, including facilities or vehicles located thereon, at any time during normal business hours or at any time if Lessor has reason to believe that a violation of any federal or state law or City ordinance has occurred or is about to occur. Should Lessee fail to comply with this provision, the City, after reasonable notice, may terminate this agreement.

31. This lease in its entirety covers all the covenants and agreements between the Lessor and Lessee and can only be changed, renewed, or extended in writing signed by the Lessor and Lessee and approved by the Port Commission and Board of Public Service, when authorized by an ordinance enacted for that purpose. The lease of Wharf property may not be extended to cover a period of time exceeding a total of 25 years as provided by Article I, Section 1(16), City Charter.

32. The terms and conditions of this lease shall be binding on Lessee's heirs, successors or assigns.

Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
02/21/92	02/21/92	T&C		
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE
03/06/92			03/13/92	03/13/92

ORDINANCE	VETOED	VETO OVR
62537		